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REMARKS/ARGUMENTS

Claims 2-17 are pending in this application. By this Amendment, Applicants amend claim 2-7, 10, 16 and 17.

Applicants respectfully request that the Amendment After Final Rejection filed on June 18, 2003 and the current Amendment be entered.

Claims 1 and 7 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Fujimoto et al. (U.S. 6,088,462). Claims 2-6 and 8-9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fujimoto et al. in view of common knowledge in the art. Claims 10-12 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fujimoto et al. in view of Morishita et al. (U.S. 4,425,554). Claims 13 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fujimoto et al. in view of Morishita et al., and further in view of common knowledge in the art. Applicants respectfully traverse these rejections.

Claim 2 has been amended to recite:

"A surface acoustic wave device utilizing a Shear Horizontal wave, comprising:
a piezoelectric substrate; and
an interdigital transducer provided on the piezoelectric substrate;
the interdigital transducer including at least three metal layers containing **at least two first layers made of a metal with a density of about 15 g/cm³ or more as a major component** and at least one second layer made of a metal with a density of about 12 g/cm³ or less, the volume of said first layer being in the range from about 20% to about 95% of the total volume of the interdigital transducer." (emphasis added)

The Examiner acknowledged that Fujimoto et al. fails to teach or suggest an interdigital transducer that includes at least two of the first layers. However, the Examiner alleged that it would have been obvious "to use two first layers in the construction of the transducer, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art."

As noted in the Amendment filed on June 18, 2003, the Examiner has relied

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upon St. Regis Paper Co. v. Bemis Co., 193 USPQ 8 (7th Cir. 1977) in his rejection of claims 2-6, 8 and 9. St. Regis Paper Co. v. Bemis Co. comes from a line of cases that required a synergistic effect of old combination claims. This line of cases was clearly rejected in Republic Industries v. Schlage Lock Co., 200 USPQ 769 (7th Cir. 1979), and thus, St. Regis Paper Co. v. Bemis Co. should no longer be relied upon in rejecting claims. It should also be noted that the MPEP does not even mention St. Regis Paper Co. v. Bemis Co., and thus, it is clearly improper for the Examiner to rely upon this rejected case law.

Even assuming *arguendo* that St. Regis Paper Co. V. Bemis Co. was still good law, in contrast to the Examiner's allegations, the surface acoustic wave device according to the present claimed invention, including "at least two first layers made of a metal with a density of about 15 g/cm³ or more as a major component" does not involve a mere duplication of parts, but rather, the unique combination and arrangement of element recited in the present claimed invention, including "at least two first layers made of a metal with a density of about 15 g/cm³ or more as a major component" provides a surface acoustic wave device which utilizes an SH wave which minimizes dispersions in center frequency, so that it is not necessary to adjust the frequency after the IDT and reflectors are produced (see, for example, the second full paragraph on page 3 of the originally filed specification). The unexpected results that are obtained by the unique combination and arrangement of element recited in the present claimed invention, including "at least two first layers made of a metal with a density of about 15 g/cm³ or more as a major component", are clearly set forth in the table on page 10 of the originally filed specification.

Morishita et al. is relied upon merely to teach reflectors, and certainly fails to teach or suggest the "at least two first layers made of a metal with a density of about 15 g/cm³ or more as a major component" as recited in the present claimed invention. Thus, Applicants respectfully submit that Morishita et al. fails to cure the deficiencies of Fujimoto et al.

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Accordingly, Applicants respectfully submit that Fujimoto et al. and Morishita et al., applied alone or in combination, fail to teach or suggest the unique combination and arrangement of elements recited in claim 2 of the present application.

In view of the foregoing amendments and remarks, Applicants respectfully submit that Claim 2 is allowable. Claims 3-17 depend upon claim 2, and are therefore allowable for at least the reasons that claim 2 is allowable.

In view of the foregoing amendments and remarks, Applicants respectfully submit that this application is in condition for allowance. Favorable consideration and prompt allowance are solicited.

To the extent necessary, Applicants petition the Commissioner for a Four-month extension of time, extending to December 18, 2003, the period for response to the Notice of Appeal dated June 18, 2003.

The Commissioner is authorized to charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1353.

Respectfully submitted,

Date: December 18, 2003


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